

AMENDED IN SENATE AUGUST 19, 2010

AMENDED IN SENATE AUGUST 17, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2780

Introduced by Assembly Member Solorio

March 3, 2010

An act to amend, repeal, and add Section 138.7 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2780, as amended, Solorio. Workers' compensation: *individually identifiable information*.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. Existing law provides that when benefits are provided or will be provided to a beneficiary under the Medi-Cal program because of an injury for which another person or insurance carrier is liable, the Director of Health Care Services may recover from that person or carrier the reasonable value of benefits so provided.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law provides that a person or public or private entity who is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or

maintained by the Division of Workers' Compensation of the Department of Industrial Relations on that claim, except as specified.

This bill would, until January 1, 2017, authorize the State Department of Health Care Services to obtain and use individually identifiable information for the purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers pursuant to ~~workers' compensation law~~ *the above-described authority of the Director of Health Care Services to recover the value of the benefits for which another person or carrier is liable.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 138.7 of the Labor Code is amended to
2 read:

3 138.7. (a) Except as expressly permitted in subdivision (b), a
4 person or public or private entity not a party to a claim for workers'
5 compensation benefits may not obtain individually identifiable
6 information obtained or maintained by the division on that claim.
7 For purposes of this section, "individually identifiable information"
8 means any data concerning an injury or claim that is linked to a
9 uniquely identifiable employee, employer, claims administrator,
10 or any other person or entity.

11 (b) (1) The administrative director, or a statistical agent
12 designated by the administrative director, may use individually
13 identifiable information for purposes of creating and maintaining
14 the workers' compensation information system as specified in
15 Section 138.6.

16 (2) (A) The State Department of Public Health may use
17 individually identifiable information for purposes of establishing
18 and maintaining a program on occupational health and occupational
19 disease prevention as specified in Section 105175 of the Health
20 and Safety Code.

21 (B) (i) The State Department of Health Care Services may use
22 individually identifiable information for purposes of seeking
23 recovery of Medi-Cal costs incurred by the state for treatment

provided to injured workers that should have been incurred by employers and insurance carriers pursuant to ~~workers' compensation law~~ Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(ii) The Department of Industrial Relations shall furnish individually identifiable information to the State Department of Health Care Services, and the State Department of Health Care Services ~~shall~~ may furnish the information to its designated agent,

provided that the individually identifiable information shall not be disclosed for use other than the purposes described in clause

(i). The administrative director may adopt regulations *solely for the purpose of governing access by the State Department of Health Care Services or its designated agents* to the individually identifiable information ~~and its uses by the department and its designated agents as defined in subdivision (a).~~

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for

1 which the information was obtained. Within a reasonable period
2 of time after the research for which the information was obtained
3 has been completed, the data collected shall be modified in a
4 manner so that the subjects cannot be identified, directly or through
5 identifiers linked to the subjects.

6 (4) The administrative director shall adopt regulations allowing
7 reasonable access to individually identifiable information by other
8 persons or public or private entities for the purpose of bona fide
9 statistical research. This research shall not divulge individually
10 identifiable information concerning a particular employee,
11 employer, claims administrator, or any other person or entity. The
12 regulations adopted pursuant to this paragraph shall include
13 provisions guaranteeing the confidentiality of individually
14 identifiable information. Within a reasonable period of time after
15 the research for which the information was obtained has been
16 completed, the data collected shall be modified in a manner so that
17 the subjects cannot be identified, directly or through identifiers
18 linked to the subjects.

19 (5) This section shall not operate to exempt from disclosure any
20 information that is considered to be a public record pursuant to
21 the California Public Records Act (Chapter 3.5 (commencing with
22 Section 6250) of Division 7 of Title 1 of the Government Code)
23 contained in an individual's file once an application for
24 adjudication has been filed pursuant to Section 5501.5.

25 However, individually identifiable information shall not be
26 provided to any person or public or private entity who is not a
27 party to the claim unless that person identifies himself or herself
28 or that public or private entity identifies itself and states the reason
29 for making the request. The administrative director may require
30 the person or public or private entity making the request to produce
31 information to verify that the name and address of the requester
32 is valid and correct. If the purpose of the request is related to
33 preemployment screening, the administrative director shall notify
34 the person about whom the information is requested that the
35 information was provided and shall include the following in
36 12-point type:

37 "IT MAY BE A VIOLATION OF FEDERAL AND STATE
38 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
39 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
40 WORKERS' COMPENSATION BENEFITS."

1 Any residence address is confidential and shall not be disclosed
2 to any person or public or private entity except to a party to the
3 claim, a law enforcement agency, an office of a district attorney,
4 any person for a journalistic purpose, or other governmental
5 agency.

6 Nothing in this paragraph shall be construed to prohibit the use
7 of individually identifiable information for purposes of identifying
8 bona fide lien claimants.

9 (c) Except as provided in subdivision (b), individually
10 identifiable information obtained by the division is privileged and
11 is not subject to subpoena in a civil proceeding unless, after
12 reasonable notice to the division and a hearing, a court determines
13 that the public interest and the intent of this section will not be
14 jeopardized by disclosure of the information. This section shall
15 not operate to restrict access to information by any law enforcement
16 agency or district attorney's office or to limit admissibility of that
17 information in a criminal proceeding.

18 (d) It shall be unlawful for any person who has received
19 individually identifiable information from the division pursuant
20 to this section to provide that information to any person who is
21 not entitled to it under this section.

22 (e) This section shall remain in effect only until January 1, 2017,
23 and as of that date is repealed, unless a later enacted statute, that
24 is enacted before January 1, 2017, deletes or extends that date.

25 SEC. 2. Section 138.7 is added to the Labor Code, to read:

26 138.7. (a) Except as expressly permitted in subdivision (b), a
27 person or public or private entity not a party to a claim for workers'
28 compensation benefits may not obtain individually identifiable
29 information obtained or maintained by the division on that claim.
30 For purposes of this section, "individually identifiable information"
31 means any data concerning an injury or claim that is linked to a
32 uniquely identifiable employee, employer, claims administrator,
33 or any other person or entity.

34 (b) (1) The administrative director, or a statistical agent
35 designated by the administrative director, may use individually
36 identifiable information for purposes of creating and maintaining
37 the workers' compensation information system as specified in
38 Section 138.6.

39 (2) The State Department of Public Health may use individually
40 identifiable information for purposes of establishing and

1 maintaining a program on occupational health and occupational
2 disease prevention as specified in Section 105175 of the Health
3 and Safety Code.

4 (3) (A) Individually identifiable information may be used by
5 the Division of Workers' Compensation, the Division of
6 Occupational Safety and Health, and the Division of Labor
7 Statistics and Research as necessary to carry out their duties. The
8 administrative director shall adopt regulations governing the access
9 to the information described in this subdivision by these divisions.
10 Any regulations adopted pursuant to this subdivision shall set forth
11 the specific uses for which this information may be obtained.

12 (B) Individually identifiable information maintained in the
13 workers' compensation information system and the Division of
14 Workers' Compensation may be used by researchers employed by
15 or under contract to the Commission on Health and Safety and
16 Workers' Compensation as necessary to carry out the commission's
17 research. The administrative director shall adopt regulations
18 governing the access to the information described in this
19 subdivision by commission researchers. These regulations shall
20 set forth the specific uses for which this information may be
21 obtained and include provisions guaranteeing the confidentiality
22 of individually identifiable information. Individually identifiable
23 information obtained under this subdivision shall not be disclosed
24 to commission members. No individually identifiable information
25 obtained by researchers under contract to the commission pursuant
26 to this subparagraph may be disclosed to any other person or entity,
27 public or private, for a use other than that research project for
28 which the information was obtained. Within a reasonable period
29 of time after the research for which the information was obtained
30 has been completed, the data collected shall be modified in a
31 manner so that the subjects cannot be identified, directly or through
32 identifiers linked to the subjects.

33 (4) The administrative director shall adopt regulations allowing
34 reasonable access to individually identifiable information by other
35 persons or public or private entities for the purpose of bona fide
36 statistical research. This research shall not divulge individually
37 identifiable information concerning a particular employee,
38 employer, claims administrator, or any other person or entity. The
39 regulations adopted pursuant to this paragraph shall include
40 provisions guaranteeing the confidentiality of individually

1 identifiable information. Within a reasonable period of time after
2 the research for which the information was obtained has been
3 completed, the data collected shall be modified in a manner so that
4 the subjects cannot be identified, directly or through identifiers
5 linked to the subjects.

6 (5) This section shall not operate to exempt from disclosure any
7 information that is considered to be a public record pursuant to
8 the California Public Records Act (Chapter 3.5 (commencing with
9 Section 6250) of Division 7 of Title 1 of the Government Code)
10 contained in an individual's file once an application for
11 adjudication has been filed pursuant to Section 5501.5.

12 However, individually identifiable information shall not be
13 provided to any person or public or private entity who is not a
14 party to the claim unless that person identifies himself or herself
15 or that public or private entity identifies itself and states the reason
16 for making the request. The administrative director may require
17 the person or public or private entity making the request to produce
18 information to verify that the name and address of the requester
19 is valid and correct. If the purpose of the request is related to
20 preemployment screening, the administrative director shall notify
21 the person about whom the information is requested that the
22 information was provided and shall include the following in
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32 agency.

33 Nothing in this paragraph shall be construed to prohibit the use
34 of individually identifiable information for purposes of identifying
35 bona fide lien claimants.

36 (c) Except as provided in subdivision (b), individually
37 identifiable information obtained by the division is privileged and
38 is not subject to subpoena in a civil proceeding unless, after
39 reasonable notice to the division and a hearing, a court determines
40 that the public interest and the intent of this section will not be

1 jeopardized by disclosure of the information. This section shall
2 not operate to restrict access to information by any law enforcement
3 agency or district attorney's office or to limit admissibility of that
4 information in a criminal proceeding.

5 (d) It shall be unlawful for any person who has received
6 individually identifiable information from the division pursuant
7 to this section to provide that information to any person who is
8 not entitled to it under this section.

9 (e) This section shall become operative on January 1, 2017.

10 SEC. 3. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order for state agencies to, at the earliest possible time, share
15 information that will increase the amount of monetary recoveries
16 by the state of Medi-Cal costs, it is necessary that this act take
17 effect immediately.